

OFFICE OF THE MONITOR
NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

Steve J. Martin
Monitor

Anna E. Friedberg
Deputy Monitor

135 West 41st Street, 5th Floor
New York, NY 10036
+1 646 895 6567 | afriedberg@tillidgroup.com

May 11, 2018

VIA ECF

The Honorable Laura T. Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10006

Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)

Dear Judge Swain,

We write to respectfully recommend a modification to the *Nunez* Consent Judgment (dkt. 249) regarding the requirement for Non-DOC Staff Members who witness a Use of Force Incident that results in an apparent injury to report the incident in writing pursuant to § V. (Use of Force Reporting & Tracking), ¶ 10. The Monitoring Team recommends that this provision is modified to require Non-DOC Staff Members who witness a Use of Force Incident to report the incident in writing regardless of whether the Use of Force Incident “results in an apparent injury.” The modifier of “results in an apparent injury” adds a subjective element to the reporting requirement that is confusing and difficult to implement. Therefore, in order to facilitate and encourage reporting by Non-DOC Staff, the Monitoring Team recommends the removal of “results in apparent injury” from the reporting requirement. The recommended modification to § V. (Use of Force Reporting & Tracking), ¶ 10, that we respectfully request your Honor approve and order, is demonstrated in the track changes below.

The City shall require that Non-DOC Staff Members who witness a Use of Force Incident ~~that results in an apparent injury to~~ report the incident in writing directly to the area Tour Commander or to a supervisor who is responsible for providing the report to the individual responsible for investigating the incident. The City shall clearly communicate in writing this reporting requirement to all Non-DOC Staff, and shall advise all Non-DOC Staff that the failure to report Use of Force Incidents ~~that result in apparent injuries~~, or the failure to provide complete and

accurate information regarding such Use of Force Incidents, may result in discipline.

This is the seventh request to modify certain provisions of the Consent Judgment.¹ We have discussed the proposed modification with the Parties and they consent to the Monitor's recommendation.

Please do not hesitate to reach out if you have any questions or require any further information.

Sincerely,

s/ Steve J. Martin

Steve J. Martin, Monitor

Anna E. Friedberg, Deputy Monitor

¹ See Appendix A, which provides a summary of the Court ordered modifications to the Consent Judgment.

**Chart of Modifications to
Nunez Consent Judgment (Dkt. No. 249)**

Docket Entry	Date	Description of Modification Order			
261	11/23/15	Effective Date set as November 1, 2015.			
266	01/05/16	Modification of certain deadlines.			
		Consent Judgment Provision	Description of Provision	Original Deadline	Revised Deadline
		Section V ¶ 21	Use of Force Reporting and Tracking -- Department to develop definitions for categories of institutional violence data	60 Days from Effective Date	Additional 30 Days
		Section XIII ¶ 1	Training --Department to develop new staff training programs (Use of Force policy, Crisis Intervention, Probe Team)	60 Days from Effective Date	Additional 60 days
		Section XIII ¶ 2	Training --Department to improve staff training (Defensive Tactics, Cell Extraction Team, and Investigator)	60 Days from Effective Date	Additional 60 days
		Section XIII ¶ 4	Training --Department to develop new Direct Supervision staff training	60 Days from Effective Date	Additional 60 days
		Section XVI ¶ 3	Inmate Discipline --Department to develop and implement an incentive system for inmates under 18	60 Days from Effective Date	Additional 30 Days
		Section XVI ¶ 4	Inmate Discipline --Department to develop and implement a disciplinary system for inmates under 18	60 Days from Effective Date	Additional 30 Days
268	03/04/16	Additional month for the Second and Third Monitoring Period.			
297	4/4/17	Modification of certain deadlines.			
		Consent Judgment Provision	Description of Provision	Original Deadline	Revised Deadline
		Section XIII (Training), ¶ 1(c)	Probe Team Training – Deployment of Probe Team Training to all Staff Members assigned to work regularly at any Intake Post.	Within 12 months of the Effective Date	December 31, 2017
		Section XIII (Training), ¶ 2(b)	Cell Extraction Team Training – Deployment of the Cell Extraction Team Training to all Staff Members regularly assigned to Special Units with cell housing.	Within 12 months of the Effective Date	December 31, 2017

Docket Entry	Date	Description of Modification Order			
		Section XIII (Training), ¶ 4(b)	Direct Supervision Training – Deployment of the Direct Supervision Training to all Staff Members assigned to work regularly in Young Inmate Housing Areas.	Within 9 months of the Effective Date	April 30, 2018
		Section V (Use of Force Reporting & Tracking), ¶ 18 Section X (Risk Management), ¶ 16	Case Management System – to be developed and implemented.	December 1, 2016	<i>Develop:</i> August 31, 2017 <i>Implement:</i> December 31, 2017
303	8/11/17	Modification to the calculation of timing of Compliance and Monitor's Report - §XIX. (Reporting Requirements and Parties' Right of Access), ¶¶ 1, 17			
		<u>AND</u>			
		Consent Judgment Provision	Description of Provision	Current Deadline	Revised Deadline
		Section IX (Video Surveillance), ¶ 2(a)	Body Worn Camera Pilot – Pilot of 100 body-worn cameras.	Within one (1) year of the Effective Date	October 10, 2017
312	04/24/18	Consent Judgment Provision	Description of Provision	Original Deadline	Revised Deadline
		Section XIII (Training), ¶ 1(b)(ii)	Crisis Intervention and Conflict Resolution Training	Within 26 months of the Effective Date.	May 31, 2019